

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Charlie D. Vick

v.

Civil No. 19-cv-267-SJM-AKJ

U.S. Marshals Service Deputies
Brent Moore, John Doe 1, John Doe 2,
and John Doe 4; Bureau of Alcohol,
Tobacco, Firearms, and Explosives
Agent John Doe 3; Donald W. Wyatt
Detention Facility Warden Daniel
Martin, Capt. J. Sullivan, Sgt. A.
Rainville, Sgt. A. Laprade, Sgt.
Castro, Health Care Administrator
Corvello, and Nurse Lucia Rei¹

REPORT AND RECOMMENDATION

Before the court is plaintiff Charlie D. Vick's amended complaint (Doc. No. 24). Vick, an inmate at the Donald W. Wyatt Detention Facility ("Wyatt"), asserts that he was subjected to excessive force upon his arrest by federal agents, which resulted in injuries to his face, neck, torso, and teeth. Vick further asserts that the federal officer transporting him to court after his arrest coerced him to make incriminating statements, using what Vick considered to be a threat of harm. In addition, Vick claims, he complained about his pain and

¹Plaintiff has named the individuals listed here as the defendants in the operative complaint (Doc. No. 24). The court has construed that pleading liberally as intending to add a fourth unnamed federal officer, identified by the court as "USMS Deputy John Doe 4."

arrest-related injuries for two weeks at Wyatt before a doctor or dentist saw him. The amended complaint is before the court for preliminary review pursuant to [28 U.S.C. § 1915A](#).²

Background

In the amended complaint, Vick alleges that in the morning on January 17, 2019, federal officers appeared at the apartment in Everett, Massachusetts where Vick was staying, with a warrant for his arrest. Those officers included USMS Deputy Marshal Brent Moore; two unnamed USMS deputy marshals, identified here as Deputy John Doe 1 and Deputy John Doe 2; and an unnamed Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") Agent, identified here as ATF Agent John Doe 3. A fourth federal officer, identified here as USMS Deputy John Doe 4, transported Vick from the apartment to the courthouse on January 17, 2019, and, Vick asserts, coerced him en route to admit to the crime.

Vick asserts he complied with the arresting officers' orders to put his hands up and get down on the floor. Vick asserts that while he was lying handcuffed on the floor, not resisting, USMS Deputies Moore, John Doe 1, and John Doe 2

²In conducting this preliminary review of the amended complaint (Doc. No. 24), the court applies the standard set forth in its May 31, 2019 Order (Doc. No. 10).

restrained Vick and kicked him several times in the mouth, neck, back, and ribs, with the encouragement of ATF Agent John Doe 3 standing nearby who, Vick alleges, had the opportunity to intervene to stop the assault, but took no action. This use of force resulted in bruises to Vick's back and side, scratches and cuts on his face, a severe laceration on his bottom lip, loss of a front tooth, damage to other teeth for which he continues to require dental care, and a detrimental impact on his mental and emotional health.

Vick further asserts that while he was being transported to the courthouse after his arrest, USMS Deputy John Doe 4 advised Vick to admit his involvement in the crime or "it would get worse." Am. Compl. (Doc. No. 24) at 4-5. Vick concluded the officer was talking about his injuries and the assault, and, out of fear of further harm, Vick made incriminating statements.

Vick alleges that after his initial court appearance on January 17, 2019, he was sent to Wyatt. During the intake process, Vick complained to Wyatt Corrections Officer A. Rainville and Wyatt Nurse Lucia Rei about his injuries and pain, and Vick asked to see a doctor. Nurse Rei took notes of Vick's injuries, and, Vick asserts, told him he would be put on a list to see a doctor.

On January 19, 2019, Wyatt Sgt. Laprade took photos of Vick's lacerations and bruises, saying that the injuries needed

to be documented. Vick reported to Laprade that he was still in pain and asked to see a doctor. Vick asserts Laprade assured him a doctor would see him soon.

After a January 22, 2019 court hearing, Vick noticed pus oozing from the laceration on his lower lip. Vick's criminal defense counsel stated in court that Vick needed medical attention, and the presiding judge stated that the USMS would take steps to ensure that Vick received care at Wyatt. A nurse at Wyatt examined Vick on that date, said his lip was infected, and arranged for him to start taking antibiotics. Vick asserts that when he complained about his pain, loose teeth, and other injuries, the nurse told Vick he was on the list to see the facility nurse and a dentist for his injuries.

On January 23, 2019 Vick asserts he complained to Wyatt Capt. Sullivan that he needed to see a doctor and a dentist for his pain and loose teeth, and Sullivan assured Vick he would be seen soon. On January 25, 2019, Vick sent a request to Wyatt Warden Daniel Martin complaining about his arrest and injuries, about being in a lot of pain, and about having issues with his teeth. The Warden responded by telling Vick to submit a medical request. Vick then submitted a medical request and received a response stating he would undergo an intake physical in the near future.

On January 27 and January 28, 2019, Vick submitted

grievances about the lack of medical attention for his pain and injuries. In addition, on January 28, 2019, when Wyatt Sgt. Castro was interviewing Vick about gang involvement, and Vick asked Sgt. Castro why the interview about gangs was more important than his injuries, Vick asserts Sgt. Castro became upset, yelling that he did not handle medical concerns. Vick grieved that issue as well. On January 29, 2019, Vick submitted an additional grievance about his need for medical attention, and also contacted the Warden directly on that date. The Warden told Vick to contact the Wyatt Health Care Administrator Corvello. Vick sent a request to Corvello and received a response stating that he would receive medical attention. On February 1, 2019, two weeks after Vick arrived at Wyatt, a dentist and two doctors examined Vick.

Vick asserts that the January 17 incident and the two-week delay before he saw a doctor and dentist for his physical injuries, affected his mental and emotional health. Am. Compl. (Doc. No. 24), at 8. A psychiatrist at Wyatt prescribed medication for Vick. Vick asserts he continues to suffer mental health problems, including sleep difficulties, anxiety, flashbacks, irritability, aggression, emotional numbness, and depression. Vick further asserts that these mental health problems have affected his relationship with his family.

Vick filed this action against the arresting officers

alleging that they used excessive force in arresting him, and against the USMS deputy who he alleges coerced him to make incriminating statements. Vick asserts that the individual Wyatt prison administrators, corrections officers, and health providers named in the amended complaint were deliberately indifferent to Vick's pain and injuries during his pretrial detention.

Construed liberally, the amended complaint (Doc. No. 24) asserts the following claims for damages for alleged violations of plaintiff's federal constitutional rights:

1. USMS Deputies Brent Moore, John Doe 1, John Doe 2, and ATF Agent John Doe 3 violated Vick's rights under the Fourth Amendment at the time they arrested Vick, rendering those defendants liable for damages in their individual capacities, under [Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics](#), 403 U.S. 388 (1971), in that:

a. USMS Deputy Marshals Brent Moore, John Doe 1, and John Doe 2 kicked and held Vick down, knocking teeth loose and causing bruises and lacerations to Vick, while he was lying on the floor handcuffed, restrained, and complying with their orders; and

b. ATF Agent John Doe 3 stood by and encouraged the assault of Vick when John Doe 3 had an opportunity to intervene to prevent further injury to Vick.

2. USMS Deputy John Doe 4, while transporting Vick from the scene of the arrest to federal court, threatened further harm to Vick, indicating that he would be subjected to "worse" injuries if he did not confess, thereby:

a. Violating Vick's Fourth Amendment right not to be subjected to a display of excessive force incident to an arrest that is objectively unreasonable under the circumstances; and

b. Violated Vick's Fifth Amendment substantive due process right not to be subjected to police interrogation tactics that shock the conscience.

3. By their acts or omissions that resulted in delays in Vick's receipt of medical and dental care for pain, lacerations, bruises, and loose teeth, Wyatt defendants Warden Daniel Martin, Capt. J. Sullivan, Sgt. A. Rainville, Sgt. A. Laprade, Sgt. Castro, Health Care Administrator Corvello, and Nurse Lucia Rei violated Vick's rights under the Fourteenth Amendment, rendering them liable for relief, in their individual capacities, under [42 U.S.C. § 1983](#).

Discussion

I. Fourth Amendment Excessive Force Claim (Claim 1)

To state a Fourth Amendment excessive force claim, Vick must show that the arresting officers' actions were objectively unreasonable, in light of the facts and circumstances known to them at the time of the use of force. See [Jennings v. Jones](#), [499 F.3d 2, 11 \(1st Cir. 2007\)](#). Factors relevant to the objective reasonableness of the force used include the "severity of the crime at issue, whether the suspect pose[d] an immediate threat to the safety of the officers or others, and whether he [wa]s actively resisting arrest or attempting to evade arrest by flight." [Id.](#) In addition, "'an officer who is present at the scene [of an arrest] and who fails to take reasonable steps to protect the victim of another officer's use of excessive force can be held liable under section 1983 for his nonfeasance,' provided that he had a 'realistic opportunity' to prevent the other officer's actions." [Martinez v. Colon](#), [54 F.3d 980, 985](#)

(1st Cir. 1995) (quoting [Gaudreault v. Salem](#), 923 F.2d 203, 207 n.3 (1st Cir. 1990)).

The Bivens doctrine allows a plaintiff to vindicate certain constitutionally protected rights through a private cause of action for damages against federal officials in their individual capacities. See [DeMayo v. Nugent](#), 517 F.3d 11, 14 (1st Cir. 2008). An action under Bivens serves as a limited “federal analog to [42 U.S.C.] § 1983 suits against state officials.” [Soto-Torres v. Fraticelli](#), 654 F.3d 153, 158 (1st Cir. 2011).

Construed liberally, the Complaint (Doc. No. 1) asserts Bivens claims for damages against USMS Deputy Moore, John Doe 1, John Doe 2, and John Doe 3 for violating Vick’s rights under the Fourth Amendment, with respect to the excessive force used in Vick’s arrest.³ In the Order issued this date, this court directs service of Claim 1 upon Moore and directs the government to identify John Does 1, 2, and 3, so that they may be served.

II. Coerced Interrogation of Arrestee (Claim 2)

In Claim 2, Vick asserts that USMS Deputy John Doe 4

³The court declines to issue a ruling at this preliminary stage of the case on whether a Bivens remedy is available for Vick’s Fourth Amendment excessive force claims. Compare [Rivera v. Samilo](#), 370 F. Supp. 3d 362, 369 (E.D.N.Y. 2019), with [Lehal v. Cent. Falls Det. Facility Corp.](#), No. 13-CV-3923 (DF), 2019 WL 1447261, at *11, 2019 U.S. Dist. LEXIS 49477, at *32 (S.D.N.Y. Mar. 15, 2019).

coerced Vick to incriminate himself on his way to the courthouse, by threatening Vick with "worse" injuries if he did not admit to the crime for which he had been arrested. That officer delivered that threat shortly after, Vick alleges, he had been kicked in the face, torso, and neck by USMS Deputies. Liberally construed, that claim asserts that USMS Deputy John Doe 4 violated Vick's rights under both the Fourth Amendment (Claim 2(a)) and the Fifth Amendment (Claim 2(b)).

A. Fourth Amendment (Claim 2(a))

The circumstances attending Vick's claim regarding USMS Deputy John Doe 4's threat -- that the officer spoke to Vick in transit to the courthouse for an initial appearance, shortly after Vick alleges he had been beaten up by the arresting officers, and that the deputy at issue was an affiliate of those who beat him up -- indicates that Claim 2(a) is properly analyzed as part of Vick's Fourth Amendment claim that the arresting officers used excessive force upon him in an objectively unreasonable manner. Cf. [Miranda-Rivera v. Toledo-Dávila](#), 813 F.3d 64, 71 (1st Cir. 2016) (Fourth Amendment applies to claims of excessive force that arise in pre-arraignment circumstances). So construed, the claim is properly served upon USMS Deputy John Doe 4, for the same reasons that the court has directed service of Claim 1 upon the other

arresting officers. The facts alleged, taken as true, with all reasonable inferences drawn in plaintiff's favor, indicate that USMS Deputy John Doe 4's threat was part of the display and use of excessive force incident to Vick's arrest, which was objectively unreasonable, in light of all the facts and circumstances known to that officer, at the relevant time.

B. Fifth Amendment Coercive Interrogation Claim⁴

The Fifth Amendment Due Process Clause provides a cause of action for allegations of outrageous police interrogation tactics that shock the conscience, see Knight v. Miami-Dade Cty., 856 F.3d 795, 823 (11th Cir. 2017); Wilkins v. May, 872 F.2d 190, 195 (7th Cir. 1989). To state a claim that an unlawful interrogation violates due process,

plaintiffs . . . must show misconduct that a reasonable person would find so beyond the norm of proper police procedure as to shock the conscience, and that is calculated to induce not merely momentary fear or anxiety, but severe mental suffering, in the plaintiff.

Wilkins, 872 F.2d at 195. The conduct that is alleged to have

⁴The court has not construed Vick's claim regarding the coerced confession as a violation of Vick's privilege against self-incrimination. Vick has not pleaded facts sufficient to state that claim, as such a violation occurs only if a person has been compelled to be witness against himself or herself at trial. See Chavez v. Martinez, 538 U.S. 760, 770 (2003); McGrath v. Town of Sandwich, 169 F. Supp. 3d 251, 258 (D. Mass. 2015).

triggered the plaintiff's mental anguish cannot be accidental or negligent and still be actionable, as negligent acts are not subject to Fourteenth Amendment liability. See [Kingsley v. Hendrickson](#), 135 S. Ct. 2466, 2473 (2015) ("pretrial detainee must show . . . that the force purposely or knowingly used against him was objectively unreasonable" to give rise to excessive force claim violating substantive due process).

Leaving for resolution at a later stage of this case such questions as whether a Bivens remedy would be available for Claim 2(a) and Claim 2(b), and whether Kingsley lowers the bar for finding that particular police interrogation tactics shock the conscience,⁵ this court finds that Vick's allegations concerning his interaction with USMS Deputy John Doe 4, taken as true, with all reasonable inferences drawn therefrom construed in Vick's favor, are sufficient to survive this court's preliminary review. Accordingly, without prejudice to defendant's ability to move to dismiss Claims 2(a) and 2(b) on any appropriate basis, in the Order issued this date, the court

⁵See, e.g., [Lee v. Janosko](#), No. 2:18-CV-01297, 2019 WL 2392661, at *5, 2019 U.S. Dist. LEXIS 94692, at *12 (W.D. Pa. June 6, 2019) (finding no Bivens remedy available for claims that officers coerced plaintiff's self-incriminating statements); see also [Edrei v. Maguire](#), 892 F.3d 525, 536 (2d Cir. 2018) ("Kingsley teaches that purposeful, knowing or (perhaps) reckless action that uses an objectively unreasonable degree of force is conscience shocking." (footnote omitted) (emphasis in original)), cert. denied, 139 S. Ct. 2614 (2019).

directs the government to name and provide contact information for the pertinent officer, identified here as USMS Deputy John Doe 4, so that this court may direct that he be served with a summons.

III. Fourteenth Amendment Medical/Dental Care Claim

A. Elements of Delayed Medical/Dental Care Claim

Fourteenth Amendment substantive due process requires the government to provide medical care to persons who are injured while being apprehended by the police. "The boundaries of this duty have not been plotted exactly; however, it is clear that they extend at least as far as the protection that the Eighth Amendment gives to a convicted prisoner." Government officials violate the Eighth Amendment if they display "deliberate indifference" to a prisoner's "serious medical needs."

[Miranda-Rivera](#), 813 F.3d at 74 (citations omitted). "A serious medical need is one that has been diagnosed by a physician as mandating treatment, or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." [Id.](#) (citations and quotation marks omitted). A pretrial detainee alleging that defendants violated his Fourteenth Amendment right to medical care for serious medical needs must also plead facts regarding the defendants' state of mind. [Id.](#) "Where it is shown that an officer was deliberately indifferent to a serious medical need of a pretrial detainee, no further mens rea of the officer – whether intent or motivation – is necessary to state a substantive due process claim." [Id.](#)

Negligent infliction of harm, however, does not rise to the level of a Fourteenth Amendment due process violation. See Kingsley, 135 S. Ct. at 2472.

B. Lip Injury

Vick has pleaded facts which, if taken as true, demonstrate that, by January 22, 2019, the laceration on his lip presented a serious medical need, in that, on that date, the cut began to ooze pus, and an unnamed medical professional diagnosed it as infected and prescribed antibiotics to treat it. Vick has alleged, however, that shortly after the injuries to his mouth were sustained, ATF Agent John Doe 3 brought Vick to a sink to wash the blood from his face. Vick has not pleaded any other facts regarding the appearance of his lip laceration prior to January 22, 2019, or the consequences of any delay in his receipt of antibiotics, which could suggest that the five days that passed after his intake at Wyatt before he was given antibiotics placed him at a substantial risk of serious harm, of which any Wyatt defendant was subjectively aware. As negligence alone cannot give rise to a Fourteenth Amendment claim, Vick's lip injury does not form the basis of any viable Fourteenth Amendment claim.

C. Other Injuries, Pain, and Tooth Problems

Vick has pleaded facts indicating that as a result of the force that accompanied his arrest, Vick suffered bruises, lacerations, and injuries to his mouth and teeth, which continued to cause him pain. Severe pain "can be a sufficiently serious medical need," [Santiago v. Ringle](#), 734 F.3d 585, 590 (6th Cir. 2013), including, in certain circumstances, pain "'from loose and infected teeth,'" [Holden v. Hirner](#), 663 F.3d 336, 342 (8th Cir. 2011) (citation omitted). But an inmate's complaints of loose teeth and tooth pain alone, in the absence of any diagnosis regarding the need for treatment for those conditions, may not amount to a serious medical need, unless those conditions are also accompanied by "outward signs of injury" such as bleeding or swollen gums, which laypersons would recognize as requiring treatment, [Holden](#), 663 F.3d at 342.

Vick has alleged that, upon his intake interview, a nurse who recorded his complaints told him he would be placed on a list to see a doctor, and several days after that intake interview, a corrections officer photo-documented Vick's injuries, telling him in doing so that Wyatt wanted to make sure it was clear that Vick had those injuries before his intake. Those facts suggest that upon Vick's intake, even a layperson could recognize that Vick's injuries amounted to a serious medical need, requiring treatment or further evaluation by a health care professional.

Vick has further pleaded, however, that within a week of when he arrived at Wyatt, a nurse examined Vick's lip, and Vick began to receive antibiotics. Vick has alleged that within two weeks of being told he would be placed on a list to see a doctor, two doctors and a dentist examined Vick. Vick has not pleaded facts showing that the delays preceding those examinations subjected him to any substantial risk of serious harm relating to Vick's pain, bruises, cuts, loose teeth, and other injuries, as to which any defendant was subjectively aware, or that the delay itself had any substantial impact on Vick's prognosis. In the absence of factual allegations that suggest that any defendants' acts or omissions manifested an intent to punish Vick, or that the acts or omissions of any defendant otherwise emanated from a state of mind more culpable than simple negligence, the district judge should dismiss the Fourteenth Amendment medical/dental care claim, Claim 3. All of the individual Wyatt prison officials, medical professionals, and corrections officers Vick named as defendants should then be dropped from this action.

D. CFDFC/Wyatt, USMS, and ATF

This court previously construed the pleadings in this case as potentially stating the underpinnings of a Fourteenth Amendment claim against Wyatt or the Central Falls Detention

Facility Corporation ("CFDFC"), the corporation that operates Wyatt, under [42 U.S.C. § 1983](#). The operative complaint lacks new allegations sufficient to state a claim that any policy, practice, or procedure of CFDFC or Wyatt is responsible for any constitutional violations by any individuals named as defendants. Accordingly, to the extent any claim of a violation of Vick's federal constitutional rights is intended to be asserted against those defendants, the district judge should dismiss that claim and drop the CFDFC and Wyatt as defendants.

Similarly, in the operative complaint (Doc. No. 24), Vick states that he no longer intends to assert any claim against the federal agencies, USMS and ATF. Bivens claims cannot proceed against federal agencies, see [FDIC v. Meyer](#), [510 U.S. 471, 486 \(1994\)](#), and it does not appear that plaintiff intends to plead a Federal Tort Claims Act claim against the United States at this time. Accordingly, the district judge should drop those agencies as defendants, as there is no claim asserted in this case against them, or against the United States, at this time.


Conclusion

For the foregoing reasons, the district court should:

1. Dismiss the Eighth Amendment medical care claim (Claim 3), without prejudice;
2. Dismiss claims against the ATF, USMS, Wyatt, and CFDFC and drop those defendants from this case; and

3. Drop all other named defendants from this case, except for USMS Deputy Marshal Brent Moore, allowing claims to proceed against USMS Deputies John Doe 1, John Doe 2, and John Doe 4; and ATF Agent John Doe 3, as set forth in this Report and Recommendation.

Any objections to this Report and Recommendation must be filed within fourteen days of receipt of this notice. See Fed. R. Civ. P. 72(b)(2). The fourteen-day period may be extended upon motion. Failure to file objections within the specified time waives the right to appeal the district court's order. See Santos-Santos v. Torres-Centeno, 842 F.3d 163, 168 (1st Cir. 2016).


Andrea K. Johnstone
United States Magistrate Judge

October 11, 2019

cc: Charlie D. Vick, pro se